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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Part 12

Docket No. USCBP-2012-0004

RIN 1515-AD82

**Inadmissibility of Consumer Products and Industrial Equipment Noncompliant
with
Applicable Energy Conservation or Labeling Standards**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the Customs and Border Protection (CBP) regulations to provide that if certain imports do not comply with applicable energy conservation or labeling standards, CBP will refuse admission when so notified by the Department of Energy (DOE) or the Federal Trade Commission (FTC) and CBP may, upon a recommendation from DOE or FTC, conditionally release the goods so that they may be brought into compliance. Specifically, CBP will refuse admission into the customs territory of the United States to consumer products and industrial equipment deemed noncompliant with the Energy Policy and Conservation Act of 1975 (EPCA) and its implementing regulations, and for which CBP has received written notice from the DOE or the FTC that identifies merchandise as noncompliant with applicable EPCA requirements. In lieu of immediate refusal of admission, and upon written or electronic notice by DOE or FTC, CBP may conditionally release under bond

to the importer such noncompliant products or equipment for purposes of reconditioning, re-labeling, or other action so as to bring the subject product or equipment into compliance with applicable energy conservation and labeling admissibility standards. If the subject import is not timely brought into compliance, CBP, at the direction of DOE or FTC, will issue a refusal of admission notice to the importer and demand redelivery of the subject products to CBP custody. A failure to comply with a demand for redelivery will result in the assessment of liquidated damages. This proposed regulation, if adopted, will implement the mandate of the EPCA, as amended, to preclude admission into the United States of certain consumer products and industrial equipment that do not meet applicable labeling or energy conservation requirements.

DATE: Comments must be received on or before [insert date 60 days from date of publication in the **Federal Register**].

ADDRESSES: You may submit comments, identified by USCBP docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2012-0004.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229-1179.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Mike Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6558. Valarie M. Neuhart, Import Safety & Interagency Requirements Division, Office of International Trade, (202) 863-6223.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and

Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

General

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309), as amended, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Similarly, Title III, Part C of the EPCA, (42 U.S.C. 6311–6317) as amended, added by Pub. L. 95-619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, a program covering industrial equipment.

Section 6302(a) of title 42 of the United States Code (42 U.S.C. 6302(a)), and its implementing regulations, prescribe the specific energy conservation and labeling standards applicable to manufacturers and, in some instances, private labelers, distributors, and retailers. Sections 6301 and 6316 of title 42 of the United States Code (42 U.S.C. 6301 and 6316) require the Secretary of the Treasury to issue regulations refusing admission into the customs territory of the United States to covered products or

covered equipment offered for importation in violation of 42 U.S.C. 6302. The statute also provides the Secretary with the discretion to authorize the importation of covered products or covered industrial equipment under such terms and conditions (including the furnishing of a bond) that ensure that the merchandise will not violate 42 U.S.C. 6302.

Proposed regulation

Pursuant to 42 U.S.C. 6301, this document proposes to amend part 12 of title 19 of the Code of Federal Regulations (19 CFR Part 12) by adding a new § 12.50 which provides that CBP will refuse admission into the customs territory of the United States to covered imports that the Department of Energy (DOE) or the Federal Trade Commission (FTC) has determined to be in violation of 42 U.S.C. 6302, upon receipt of written or electronic notice from the DOE or FTC, as appropriate. The notice will identify a named regulated party as being in violation of 42 U.S.C. 6302 and will describe the subject product or equipment in a manner sufficient to enable CBP to identify the articles.

While refusal of admission will be the norm, there may be instances where reconditioning, re-labeling, or other modification may bring an import into compliance with applicable energy conservation or labeling admissibility standards. Accordingly, this rule proposes a procedure to allow CBP to conditionally release noncompliant imports to the importer under a CBP basic importation and entry bond for purposes of bringing the merchandise into conformity with the applicable standards, upon a recommendation by the DOE or FTC. In any case involving conditional release of a covered import under bond, the CBP port director always retains the discretion to require additional security in any case where he believes that acceptance of a continuous bond

would hamper the enforcement of the law. See 19 CFR 113.13(d). An initial conditional release period of 30 days is proposed to be established by this rulemaking.

If the DOE or FTC notifies CBP that the subject imports have been brought into compliance with applicable energy conservation and labeling admissibility standards before the conclusion of the 30-day conditional release period, or any authorized extension thereof, CBP may release the subject goods into the commerce and entry may be completed.

If attempts at modification fail within the 30-day conditional release period, or any authorized extension thereof, the DOE or FTC will notify CBP of that fact, and CBP will issue a notice of refusal of admission to the importer concurrent with a demand for redelivery under the terms and conditions of the CBP bond. A failure to comply with the demand for redelivery will result in the assessment of liquidated damages equal to three times the value of the imports at issue. Moreover, covered imports that are conditionally released will be under the concurrent jurisdiction of DOE and/or FTC.

The proposed amendments are consistent with § 429.5(b) of title 10 of the Code of Federal Regulations (10 CFR 429.5(b)), which is a DOE regulation that further notifies the importing public that any covered product or equipment offered for importation that does not meet the applicable energy conservation standards set forth in 42 U.S.C. 6291-6317 will be refused admission into the customs territory of the United States under CBP issued regulations.

EXECUTIVE ORDER 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

THE REGULATORY FLEXIBILITY ACT

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The proposed rule, if finalized, will establish a procedure whereby the DOE or the FTC will notify CBP of any imported article that is in violation of 42 U.S.C 6302 and its implementing regulations. Upon notification, CBP will refuse these articles admission into the commerce of the United States. Upon a recommendation by the DOE or FTC, however, CBP will conditionally release noncompliant imported articles under a CBP basic importation and entry bond for the purpose of bringing the merchandise into compliance with 42 U.S.C. 6302 and its implementing regulations. This conditional release is valid for a period of 30 days, but it may be extended by the DOE or FTC.

The DOE has identified only a small number of businesses importing noncompliant articles, of which fewer than five were small entities. When notified of their noncompliance, each of these businesses ceased importation of these articles. Given the small number of small entities identified by DOE as having been noncompliant and that the law prohibiting the importation of these noncompliant articles within the United States was enacted in 1975, CBP does not anticipate a significant number of small entities attempting to import articles which violate 42 U.S.C 6302 and its implementing regulations. If a small entity does import an article in violation of 42 U.S.C 6302 and its implementing regulations, the small entity can request the DOE or the FTC allow CBP to grant the imported article a conditional release. CBP believes that cost associated with this conditional release to be negligible because this request is virtually costless to the small entity and the importer is already required to maintain a CBP basic importation and entry bond.

Accordingly, CBP does not believe this rule will have a significant impact on a substantial number of small entities. CBP welcomes any comments regarding this assessment. If CBP does not receive any comments contradicting this finding, CBP will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

PAPERWORK REDUCTION ACT

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

SIGNING AUTHORITY

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspection, Electronic products, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture.

PROPOSED AMENDMENTS TO THE CBP REGULATIONS

For the reasons stated above, it is proposed to amend part 12 of title 19 of the Code of Federal Regulations (19 CFR Part 12) as set forth below.

PART 12--SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read as follows and the specific authority citation is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.50 also issued under 42 U.S.C. 6301;

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2. A new center heading and new § 12.50 are added to read as follows:

Consumer Products and Industrial Equipment Subject To Energy Conservation or Labeling Standards

§ 12.50 Consumer products and industrial equipment subject to energy conservation or labeling standards.

(a) Definitions. For purposes of this section, the following terms have the meanings indicated:

Covered import. The term “covered import” means a consumer product or industrial equipment that is classified by the Department of Energy as covered by an applicable energy conservation standard, or by the Federal Trade Commission as covered by an applicable energy labeling standard, pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6291- 6317), and that is imported or attempted to be imported.

DOE. The term “DOE” means the Department of Energy.

Energy conservation standard. The term “energy conservation standard” means any standard meeting the definitions of that term in 42 U.S.C. 6291(6) or 42 U.S.C. 6311(18).

FTC. The term “FTC” means the Federal Trade Commission.

Noncompliant covered import. The term “noncompliant covered import” means a covered import that the Department of Energy (DOE) or the Federal Trade Commission (FTC) has determined to be in violation of 42 U.S.C. 6302.

(b) CBP action. If a covered import does not comply with applicable energy conservation or labeling admissibility standards, the DOE or FTC may direct CBP to either refuse admission of the covered import pursuant to paragraph (c) of this section or recommend conditional release of the covered import to be brought into compliance pursuant to paragraph (d) of this section.

(c) Refusal of admission. CBP will refuse admission into the customs territory of the United States to any noncompliant covered import upon receipt of written or electronic notice from the DOE (see also 10 CFR 429.5) or FTC that identifies the importer of the noncompliant covered import and describes the subject import in a manner sufficient to enable CBP to identify the article.

(d) Conditional release. In lieu of immediate refusal of admission into the customs territory of the United States, CBP, upon a recommendation from the DOE or FTC, may permit the release of a noncompliant covered import to the importer of record for purposes of reconditioning, re-labeling, or other modification. The release from CBP custody of any such covered import will be deemed conditional and subject to the bond conditions set forth in § 113.62 of this Chapter. Note: Conditionally released covered imports will also be subject to the jurisdiction of DOE and/or FTC.

(1) Duration. Unless extended in accordance with paragraph (d)(2) of this section, the conditional release period will terminate upon the earliest occurring of the following events:

- (i) The date that CBP issues a notice of refusal of admission pursuant to paragraph (c) of this section;
- (ii) The date that the DOE or FTC issues a notice to CBP stating that the covered import is in compliance and may proceed; or
- (iii) At the conclusion of the 30-day period following the date of release.

(2) Extension. The conditional release period may be extended if both CBP and the importer of record receive, within the initial 30-day conditional release period or any subsequent authorized extension thereof, a written or electronic notice from the DOE or FTC stating the reason for and anticipated length of the extension.

(3) Issuance of a redelivery notice and demand for redelivery. If the noncompliant covered import is not timely brought into compliance, and if so directed by DOE or FTC, CBP will issue a refusal of admission notice to the importer pursuant to paragraph (c) of this section and, in addition, CBP will demand the redelivery of the specified covered product to CBP custody. The demand for redelivery may be made concurrently with the notice of refusal of admission.

(4) Liquidated damages. A failure to comply with a demand for redelivery made under this paragraph (d) will result in the assessment of liquidated

damages equal to three times the value of the covered product. Value as used in this provision means value as determined under 19 USC 1401a.

David V. Aguilar
Acting Commissioner
U.S. Customs and Border Protection

Approved: March 20, 2012

Timothy E. Skud
Deputy Assistant Secretary of the Treasury

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